IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.654 OF 2006
IN
CRIMINAL APPEAL NO.538 OF 2006

Rajesh Ramanand Pandey and anr.
....Applicants.
Vs.

The State of Maharashtra.
....Respondent.

Mr. R.D.Suryawanshi for the Applicants.
Mrs. U.V. Kejriwal, A.P.P. for the State.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :10TH JANUARY,2007.

P.C.

1. Heard.

2. This is an application filed by the appellants for suspension of sentence. These appellants were tried by the Trial Court for having committed offence under Sections-302, 452, 394 read with 34 of the Indian Penal Code and for the offence punishable under Section 397 of the Indian Penal Code. It was the case of the prosecution that the appellant/original Accused No.1 was in the employment of M/s A.P.Engineering at Manpada, Thane and also used to visit the house of the complainant who is

employer, for attending the household work. On the day of incident, while deceased wife of the complainant was alone in the house, the appellants were seen along with her in the apartment. Thereafter, the wife of the complainant deceased Krishana was found murdered inside the house by their daughter-Anisha and the appellants accused were found missing. In the course of investigation, gold bangles and a C.D. came to be recovered from the sister of the appellants/accused belonging to the deceased. The recovery was made from Village Shever in Azamgad, Uttar Pradesh. The Trial Court found that the prosecution has proved that the appellants/accused have committed murder of the deceased and robbed her two bangles and therefore, they came to be convicted.

3. The learned counsel appearing for the appellants/accused submits that one of the witness who speaks about having seen appellants, last seen together in the apartment of the complainant with his wife deceased Krishana is P.W.No.7-Ranjana, whose statement was recorded after delay of 21-months and therefore, it would be most unsafe to rely upon the said witness and therefore, the prosecution has not able to put forth any justifiable reason.

4. It is further submitted that, even if, other evidence on record is taken into consideration, this complicity of appellants/accused is not made out except that they are real brothers. Further, if at all, there was any grudge against the complainant or his family members which can be only attributed against the appellant/original accused No.2 who according to the prosecution has borrowed certain money and was found missing immediately after the incident, as he failed to attend the work at the factory of the complainant and therefore, court may consider atleast the case of the appellant No.1 for suspension of sentence.

5. The learned A.P.P. strongly objects for suspension of sentence of the appellants/accused and submits that they have been charged and convicted by the Trial Court by appreciating the evidence on record and the Trial Court has spelt out the reasons for placing reliance on the evidence of P.W.No.7-Ranjana and accepted the explanation offered by the prosecution. Therefore, at this stage, it will be premature even to arrive at the finding that P.W.No.7-Ranjana is not reliable witness.

6. We find that the Trial Court having held both the appellants/accused guilty for having committed murder and considering the nature of the evidence, no case is made out for suspension of sentence. The facts and the nature of the evidence on record, even does not justify the case of the appellant/accused No.1 for suspension of sentence. Therefore, application is rejected.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)